IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 623

DISTRICT OF COLUMBIA, A Municipal Corporation,
Petitioner,

v.

ALPHONSE J. VIGNAU and JOSEPHINE VIGNAU,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

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DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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Petition

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, District of Columbia, respectfully shows and represents unto Your Honors that:

Statement of Matter Involved

The principal question upon which the jurisdiction of this Court is invoked in this case is the meaning of Rules 8(e) and 20(a) of the Federal Rules of Civil Procedure as illustrated

by Form 10 appended to such rules. Briefly stated, the question arose in the following manner: One Margaret McCathran filed a complaint in the District Court of the United States for the District of Columbia, naming as defendants the petitioner District of Columbia, the Sanitary Grocery Company, Inc., a corporation, and the respondents. In this complaint, the plaintiff McCathran alleged that she suffered personal injuries as the result of tripping and falling over an obstruction or protrusion in the sidewalk or parking adjacent to premises 4801 Georgia Avenue, Northwest, in the District of Columbia, which "obstruction or protrusion was negligently created or installed, maintained or permitted to remain or exist, without proper lighting or warning to pedestrians, by the said defendants, or one or more of them." The petitioner then filed a cross-complaint against respondents and the Sanitary Grocery Company, alleging that either the respondents or the Sanitary Grocery Company paved or caused to be paved the public parking lying between the existing public sidewalk and the building; that prior to such paving a water service pipe line with a stop-cock valve had been installed by one of the predecessors in title of the respondents and "that at the time of the paving of said parking the cross-defendants, or either of them, negligently left or caused to be left the said stop-cock box and cover thereof, above the surface of the paved parking." The plaintiff McCathran offered evidence to show that her injuries were sustained as a result of tripping over this water stop-cock box and that this condition had existed for a number of years. The petitioner then offered evidence, which, we submit, was sufficient to justify the jury in finding, upon the cross-complaint, that petitioner did not pave the parking between the sidewalk and the building and had nothing to do with the creation of the dangerous condition, but that the paving was done by the respondents and the dangerous condition was created and maintained by them. At the conclusion of the testimony offered on behalf of the plaintiff McCathran and the petitioner, the respondents and the Sanitary Grocery

Company moved for directed verdicts as against both the plaintiff McCathran and the petitioner. These motions were granted. The question of the liability of the petitioner to the plaintiff McCathran was submitted to the jury and the jury returned a verdict against the petitioner and in favor of the plaintiff. Petitioner then appealed to the United States Court of Appeals for the District of Columbia from the judgment in favor of respondents on petitioner's cross-complaint and the sole question presented was whether there was evidence sufficient to go to the jury on the issue whether respondents had created and maintained the dangerous obstruction. Upon that question the majority of the Court of Appeals did not pass, but decided the case upon a question not presented. The Court held that, because the cross-complaint had alleged that plaintiff's injuries were the result of the negligence "of the cross defendants, or either of them", the District had pleaded "not in the alternative—but equivocally and ambiguously" and that when the evidence disclosed that the respondents alone had created the dangerous condition and that it was their primary duty to maintain the stop-cock box in a safe condition, it then became necessary for the petitioner to amend its pleading to allege the sole responsibility of the respondents, and that the failure of petitioner so to amend precluded it from recovering from respondents. The Court further held that the verdict of the jury against petitioner and in favor of plaintiff McCathran established the sole liability of petitioner and prevented an action over.

Jurisdiction

The judgment of the United States Court of Appeals was entered on July 17, 1944 and a petition for rehearing was denied September 25, 1944. The jurisdiction of this Court to issue the writ applied for is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented

1. Whether a complaint filed in accordance with Rules 8(e) and 20(a) of the Federal Rules of Civil Procedure and which follows the form set forth in Form 10 of the forms appended to such rules alleging that one defendant or another defendant, or both, are guilty of negligence, must be amended when the evidence shows that only one of the defendants is guilty.

2. Whether the evidence was sufficient to entitle petitioner to have the case submitted to the jury on the issue of the liability over of the respondents to the petitioner.

3. Whether a verdict obtained against a municipality by one suffering personal injuries from the failure of the municipality to use due care to maintain its streets in a reasonably safe condition is a determination that the municipality is alone responsible and precludes an action over against the person creating or maintaining the dangerous condition.

Reasons Relied on for the Allowance of the Writ

The principal question here presented is one of great public importance in that it involves a construction of the Federal Rules of Civil Procedure. The decision of the United States Court of Appeals for the District of Columbia is contrary to decisions of other circuit courts of appeals, which hold that pleadings are sufficient if they conform with the forms set out in the appendix to such rules.

The holding of the Court of Appeals that a verdict obtained against a municipality for personal injuries resulting from a failure to use due care to maintain its streets in a reasonably safe condition is a determination that the municipality is solely responsible, and precludes an action over against the person causing the dangerous condition, is contrary to the decision of this Court in the case of *Washington Gaslight Company* v. *District of Columbia,* 161 U. S. 316.

WHEREFORE, your petitioner prays the allowance of a writ of certiorari to the United States Court of Appeals for the District of Columbia in this cause, and entitled District of Columbia, a municipal corporation, appellant, v. Alphonse J. Vignau and Josephine Vignau, appellees, No. 8678; that said cause may be reviewed and determined by this Court, and that the judgment of said Court of Appeals may be reversed and set aside; and for such further relief and remedy in the premises as this Court may deem meet and proper.

DISTRICT OF COLUMBIA,
Petitioner.

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